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AUG -2 2012

DAVID W. PETERSON

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KITSAP

WHIDBEY ISLAND BANK, a Washington
banking corporation,

Plaintiff,

vs.

DUNES MOTEL, INC., a Washington
corporation,

Defendant.

12 2 01687 1
NO.

PETITION FOR
APPOINTMENT OF
CUSTODIAL RECEIVER

C12-5747

COMES NOW the Plaintiff, Whidbey Island Bank, and for cause of action
against the Defendant states and alleges as follows:

1. The Plaintiff, Whidbey Island Bank, is a Washington banking corporation.

The Plaintiff has paid all licenses and fees due and owing the State of Washington and
has otherwise satisfied all conditions necessary for bring of this action. Plaintiff
Whidbey Island Bank is the Assignee of the interest of City Bank in the below
described Promissory Note, Commercial Security Agreement and Deed of Trust
pursuant to the Receiver's Assignment of Deed of Trust and Loan recorded with the

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2 Kitsap County Auditor on March 17, 2011, under Kitsap County Auditor's recording
3 No. 201103170092, a copy of which is attached hereto as Exhibit E.

4 2. Defendant Dunes Motel, Inc., is a Washington corporation doing business
5 in Kitsap County, Washington which owns and operates a motel at the below
6 described real property known as the Dunes Motel, 3400 - 11th Street, Bremerton,
7 Kitsap County, Washington 98312 and legally described as follows:
8

9 PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST
10 QUARTER, SECTION 15, TOWNSHIP 24 NORTH, RANGE 1 EAST, W.M., IN
11 KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

12 BEGINNING AT THE SOUTHEAST CORNER OF TRACT 16, PHINNEY 2.5
13 ACRE TRACTS, ACCORDING TO PLAT RECORDED IN VOLUME 5 OF
14 PLATS, PAGE 16; THENCE SOUTH ALONG THE SOUTHERLY
15 PROLONGATION OF THE EAST LINE OF SAID TRACT TO AN
16 INTERSECTION WITH THE NORTH LINE OF 11TH STREET PRODUCED
17 WEST; THENCE WEST ALONG THE NORTH LINE OF 11TH STREET 301.32
18 FEET; THENCE NORTH 100 FEET; THENCE EAST PARALLEL TO THE
19 NORTH LINE OF SAID 11TH STREET TO THE POINT OF BEGINNING.

20 and including the personal property located thereon including but not limited to
21 furniture, fixtures, equipment and inventory.

22 3. That on or about February 29, 2008 the Defendant Dunes Motel, Inc. for
23 valuable consideration, made, executed and delivered to City Bank its Promissory
24 Note for the principal sum of \$2,246,525.08, a copy of which is attached hereto as
25 Exhibit A.

26 4. As security for the above Promissory Note identified as Exhibit A above the
27 Defendant Dunes Motel, Inc. executed and delivered to City Bank a Deed of Trust
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2 designating City Bank as beneficiary in the above described real property February 29,
3 2008 which Deed of Trust was recorded with the Kitsap County Auditor on March 13,
4 2008 under Kitsap County Auditor's Recording No. 200803130166, a copy of which
5 is attached hereto as Exhibit B and incorporated herein by this reference.
6

7 5. As further security for the above Promissory Note identified as Exhibit A the
8 Defendant Dunes Motel, Inc. executed and delivered to City Bank a Commercial
9 Security Agreement dated February 29, 2008 by which said Defendant granted City
10 Bank a security interest in all its inventory, chattel paper, accounts, equipment,
11 general intangibles and fixtures and other personal property, a copy of which is
12 attached hereto as Exhibit C and incorporated herein by this reference.
13

14 6. On April 12, 2012 the Defendant Dunes Motel, Inc. defaulted on its payment
15 to Whidbey Island Bank under the Promissory Note identified as Exhibit A above by
16 its failure to pay \$14,061.37 due on said date and on the 12th day of each month
17 thereafter. As a result of the Defendant Dunes Motel, Inc. default the interest rate
18 on the above described Promissory Note was increased to 21% per annum effective
19 May 28, 2012. The total delinquency on the Promissory Note identified as Exhibit A
20 is \$56,245.48 due for monthly payments through July 12, 2012, late charges of
21 \$8,677.41, default interest increase of \$41,682.90 plus Plaintiff's attorney fees and
22 costs and foreclosure expenses. The total due on the note is the principal sum of
23 \$2,174,751.91, interest of \$105,048.77 through July 13, 2012 and late charges of
24 \$8,677.41 for a total of \$2,288,478.09 plus attorney's fees and costs with interest
25
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2 accruing after July 13, 2012 at the current rate of \$1,268.61 per day. The Defendant
3 Dunes Motel, Inc. is in further default under the terms of the Deed of Trust by its
4 failure to pay the second half 2010 real estate taxes of \$8,755.73, 2011 real estate
5 taxes of \$17,545.60 and first half 2012 real estate taxes of \$10,090.44 plus interest
6 and penalties.
7

8 7. As a consequence of the Defendant Dunes Motel, Inc.'s default under the
9 terms of the Promissory Note identified as Exhibit A, Plaintiff has commenced a non-
10 judicial foreclosure of the Deed of Trust identified as Exhibit B above. Attached hereto
11 as Exhibit D is a copy of the Notice of Trustee's Sale recorded with the Kitsap County
12 Auditor on July 16, 2012 under Kitsap County Auditor's Recording No. 201207160301.
13

14 8. The Deed of Trust identified as Exhibit B above provides on Page 2 as follows:

15 "Grantor hereby assigns as security to Lender, all of Grantor's right, title, and
16 interest in and to all leases, Rents, and profits of the Property."

17 The Deed of Trust further provides on Page 7 as follows:

18 "Lender shall have the right, without notice to Grantor to take possession of and
19 manage the Property and collect the Rents, including amounts past due and
20 unpaid, and apply the net proceeds, over and above Lender's costs, against the
21 indebtedness."
22

23 The Defendants are continuing to operate the Dunes Motel, collect the rents and profits
24 therefrom, utilize the inventory while failing to pay the outstanding secured loan to the
25 Plaintiff or the taxes on the property causing damage to the Plaintiff.
26

27 9. The Deed of Trust Identified as Exhibit B above provides on page 8 for the
28 appointment of a receiver in the event of a default as follows:

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"Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding or pending foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership against the indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver."

10. The Plaintiff is entitled to the appointment of a custodial receiver pursuant to RCW 7.60.015 to preserve and protect the security interest of Plaintiff as set forth above.

WHEREFORE, Plaintiff prays for judgment as follows:

1. The appointment of a custodial receiver to take possession of the above described property commonly known as the Dunes Motel, 3400 - 11th Street, Bremerton, Kitsap County, Washington 98312 and legally described as follows:

PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER, SECTION 15, TOWNSHIP 24 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF TRACT 16, PHINNEY 2.5 ACRE TRACTS, ACCORDING TO PLAT RECORDED IN VOLUME 5 OF PLATS, PAGE 16; THENCE SOUTH ALONG THE SOUTHERLY PROLONGATION OF THE EAST LINE OF SAID TRACT TO AN INTERSECTION WITH THE NORTH LINE OF 11TH STREET PRODUCED WEST; THENCE WEST ALONG THE NORTH LINE OF 11TH STREET 301.32 FEET; THENCE NORTH 100 FEET; THENCE EAST PARALLEL TO THE NORTH LINE OF SAID 11TH STREET TO THE POINT OF BEGINNING.

and the personal property of the Defendant Dunes Motel, Inc. located thereon including but not limited to furniture, fixtures, equipment, accounts and inventory, and

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2 to maintain and preserve the premises until the non-judicial foreclosure sale of the
3 above described premises under the Deed of Trust identified as Exhibit B above, which
4 sale shall not be stayed by this action, and the delivery of said premises to the
5 purchaser after said foreclosure sale.

6
7 2. That any net profits generated by the receiver from the operation of the
8 above described motel be disbursed to Plaintiff between the tenth day and the first day
9 before the Trustee's sale foreclosing Plaintiff's Deed of Trust and applied to the debt
10 secured thereby.

11
12 3. That any net profits generated by the receiver through the date of sale from
13 the operation of the above described motel not disbursed to Plaintiff prior to the
14 trustee's sale be applied to any remaining obligation owed to Plaintiff on its above
15 described Promissory Note after the trustee's sale and any excess proceeds after the
16 Plaintiff's Note is satisfied in full shall be disbursed to Defendant or other secured
17 creditors as ordered by the court.

18
19 4. For such other relief as the court deems appropriate and just.

20 DATED THIS 2nd day of August, 2012.

21
22 
23 R. Scott Hutchison, WSBA #5999
24 Attorney for Plaintiff